

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

GE HFS HOLDINGS, INC.
Formerly known as
HELLER HEALTHCARE FINANCE,
INC.,

Plaintiff,

and

MICHAEL INGOLDSBY,

Intervenor/Plaintiff,

v.

NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA, and
INTERNATIONAL INSURANCE
GROUP, LTD.,

Defendants.

CIVIL ACTION No: 05-CV-11128-NG

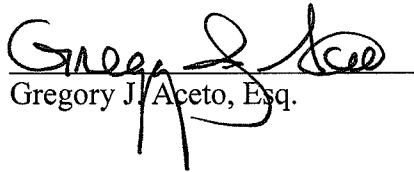
**AFFIDAVIT OF GREGORY J. ACETO, ESQ. IN OPPOSITION TO NATIONAL
UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA'S
MOTION FOR SUMMARY JUDGMENT**

I, Gregory J. Aceto, Esq. being duly sworn, depose and state as follows:

1. I am an attorney with the law firm of Johnson & Aceto, LLP, 67 Battery March Street, Suite 400, Boston, Massachusetts, and am duly licensed to practice law in the courts of the Commonwealth of Massachusetts.
2. I am counsel for the Plaintiff-Intervenor Michael Ingoldsby ("Ingoldsby" or "Plaintiff-Intervenor").

3. True and correct copies of excerpts from the Deposition of Michael Ingoldsby, taken October 20, 2006, are attached hereto as *Exhibit A*.
4. True and correct copies of excerpts from a policy of insurance issued by National Union to Managed Health Care Systems, Inc., being policy number 873-87-52, effective August 4, 2001, through August 4, 2002 are attached hereto as *Exhibit B*.

Signed under the pains and penalties of perjury this 29th day of November, 2006.


Gregory J. Aceto, Esq.

Volume 1
Pages 1-101
Exhibits per index

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

Civil Action No. 05-CV-11128-NG

----- :
GE HFS Holdings, Inc. :
Formerly Known As :
Heller Healthcare Finance, Inc., :
Plaintiff :
and :
Michael Ingoldsby, :
Intervenor/Plaintiff :
VS :
National Union Fire Insurance :
Company of Pittsburgh, Pennsylvania :
and International Insurance Group, LTD, :
Defendants :
----- :

DEPOSITION OF MICHAEL INGOLDSBY, a
witness called on behalf of the Defendant, taken
pursuant to the Federal Rules of Civil Procedure, before
Patricia M. Haynes, a Certified Shorthand Reporter and
Notary Public in and for the Commonwealth of
Massachusetts, CSR No.: 14620F, at the Offices of
Edwards, Angell, Palmer & Dodge, LLP, 111 Huntington
Avenue, Boston, Massachusetts, on Friday, October 20,
2006, commencing at 10:00 a.m.

COPLEY COURT REPORTING
58 Batterymarch Street, Suite 317
Boston, Massachusetts 02110
(617) 423-5841

1 APPEARANCES:

2
3 Edwards, Angell, Palmer & Dodge, LLP
4 (By: John Tumilty, Esquire)
5 111 Huntington Avenue
6 Boston, Massachusetts 02199
7 Counsel for the Defendant,
8 National Union Fire Insurance Company

9 Johnson & Aceto, P.C.
10 (By: Gregory J. Aceto, Esquire)
11 67 Batterymarch Street, Suite 400
12 Boston, Massachusetts 02110
13 Counsel for the Intervenor/Plaintiff

14 Tucker, Heifetz & Saltzman, LLP
15 (By: Syd A. Saloman, Esquire)
16 100 Franklin Street
17 Boston, Massachusetts 02110
18
19
20
21
22
23
24

1 Q. Can you tell me if you can remember and if you
2 can go in chronological order what positions you held
3 with MHCS?

4 A. Well, I was really just a board member and
5 stockholder for -- we started it around 1980, and I
6 remained in that role until probably '92, somewhere
7 around that period. And only around '92, '93 did I play
8 an active role.

9 But even that was not full time. I was not
10 involved with the managing of the company at all in the
11 period of '94 to the late '90s. I may be off on that.
12 And I wasn't involved with any aspect of day-to-day
13 activities from mid '98 forward.

14 Q. Any aspect at all from mid '98 forward?

15 A. I had no responsibilities.

16 Q. Leaving aside the issue of whether you
17 actually had responsibilities, did you have any input
18 into day-to-day operations of the company at any time
19 from '98 forward?

20 A. Not in terms of operations, no.

21 Q. What input did you have with respect to MHCS
22 from '98 forward?

23 A. The only area that I had involvement in was
24 making introductions for banking relationships. I had

1 no involvement with the aspects of the business and
2 health care providing.

3 MR. ACETO: I need to talk to him about an
4 issue.

5 (Witness confers with counsel.)

6 BY MR. TUMILTY:

7 Q. Who would you say was responsible for the
8 day-to-day operations at MHCS during 1998 and 1999?

9 A. Indy Edwards.

10 Q. Anyone else?

11 A. Pam Jones was the controller.

12 Q. Is it your belief that both of those people
13 were responsible for the day-to-day operations of MHCS
14 from 1999 until MHCS ceased to exist?

15 A. Yes.

16 Q. Were you ever employed by MHCS?

17 A. Yes, but it was prior to '98.

18 Q. When were you employed by MHCS?

19 A. I don't know the exact dates. It would have
20 been somewhere in the 92 or '93 or '97.

21 MR. ACETO: I want to make sure the
22 question is not whether he was a board officer or
23 member.

24 MR. TUMILTY: Employed.

1 representing you personally in connection with the
2 debtor-in-possession loan and security agreement?

3 A. I did.

4 Q. Who was that?

5 A. I don't remember his name. Greg would know.

6 Q. Was it an attorney located here in Boston?

7 A. Yes.

8 Q. Do you recall the law firm that attorney works
9 with?

10 A. No.

11 Q. Why would you have signed a signature page
12 document, namely page 51, without it being attached to
13 anything else?

14 A. Well, my wife and I believe we saw drafts of
15 the agreement or our attorneys saw drafts. I know
16 papers were being exchanged. The signature page was
17 faxed to us wherever we were and we signed a single
18 page. That's what we believe.

19 You have to understand that my arrangement or
20 my wife's arrangement with Heller was there would be no
21 personal guaranty, and they agreed to that. So why
22 would I or my wife agree particularly when the company
23 is in difficult straits, agree to a personal guaranty?
24 It wouldn't have happened in a million years.

1 Q. Do you recall an October 2001 meeting that you
2 participated in with representatives of Heller
3 concerning the overstatement of Medicare payments?

4 A. I don't remember the date, but I do remember
5 going to that meeting.

6 Q. Tell me what you remember about that meeting.

7 A. I remember that Indy and Pam, Indy Edwards and
8 Pam Jones had raised an issue with Heller about the
9 borrowing base and the components that were being
10 calculated into the borrowing base.

11 It dealt with a new methodology that was
12 adopted by Medicare. I don't remember the technical
13 name, but it had to basically estimate what the value of
14 your services would turn out to be on a certain patient.
15 You would book those revenues accordingly.

16 They felt that they were booking more than
17 what they should be booking, and they talked to Heller
18 about it. And right before that meeting -- there wasn't
19 any big consternation. If anything, Heller was coming
20 up to visit with them. Heller had done the audits and
21 had been satisfied.

22 That day, because they wanted me to be there,
23 I went over. And Heller had their attorney, two of
24 their health care guys, lenders, I think they had four

1 people in total. And, of course, the people that run
2 Managed Healthcare were there, Indy Edwards and Pam
3 Jones and I think someone else.

4 There was a discussion that they all had about
5 the borrowing base and different ways to interpret what
6 they were basically including in it. At the end of that
7 meeting, Heller was satisfied that although there was
8 some overstatement, there wasn't any big problem.

9 And in fact, they came up with a creative way,
10 I can't remember exactly what it was, but it was to
11 reach out to future services and pull those into the
12 present. So there was no crisis that was a part of that
13 meeting at all.

14 It was a very pleasant meeting and it lasted
15 about an hour and a half and they served lunch in the
16 office and I left. There wasn't ever any mention of a
17 problem by Heller. In fact, some of the documents that
18 you should have show the correspondence where they even
19 made suggestions as to how to enhance the borrowing
20 base.

21 So that's what that meeting was all about.
22 You know, it becomes a focal point for the later
23 litigation.

24 Q. Which later litigation?

1 A. Correct.

2 Q. That was a poor question on my part. I want
3 to make sure the record is clear. On the schedules that
4 you filed in your bankruptcy, you didn't list any
5 interest in any insurance policies issued by National
6 Union, correct?

7 A. Correct.

8 MR. TUMILTY: We'll mark this as the next
9 exhibit.

10 (Document marked for identification as
11 Exhibit No. 5.)

12 BY MR. TUMILTY:

13 Q. Why didn't you list on your schedules that
14 were filed in your personal bankruptcy an interest in
15 any policy listed by National Union?

16 A. Well, we discussed it, and my attorney didn't
17 see it as an asset. But I'm looking at this letter and
18 I don't even know if the suit was filed -- this looks
19 like it was filed before -- can we go off the record for
20 a second?

21 Q. You can go off the record to talk to your
22 attorney if you want to. I'd like to leave that letter
23 aside for a second --

24 A. I'll answer the question. It came up and it

1 was discussed, also discussed with the trustee. I never
2 saw it as an asset. They didn't see it as an asset.
3 And as I sit here now, I'm trying to remember when --
4 this was the countersuit against Heller.

5 Q. We'll get to that.

6 A. I'm confused.

7 Q. We've already established that you didn't list
8 in your bankruptcy schedules any interest in any
9 policies issued by National Union, correct?

10 A. Correct.

11 Q. And you said that it was discussed with your
12 bankruptcy attorney whether to list an interest in the
13 policy, correct?

14 A. Correct.

15 Q. And can you tell me what was said in those
16 discussions?

17 MR. ACETO: I'm going to instruct him not
18 to answer that question.

19 MR. TUMILTY: I believe that I'm entitled
20 to an answer. I will put on the record I'm entitled to
21 an answer since you appeared to be relying on advice of
22 counsel defense as to why you did not list them in your
23 schedules.

24 BY MR. TUMILTY:

1 Q. Is that the reason you did not list them in
2 your schedules, because of advice of counsel?

3 MR. ACETO: You can answer that question.

4 BY MR. TUMILTY:

5 A. Yes.

6 Q. Can you tell me what you and your attorney
7 discussed relating to your bankruptcy schedules?

8 MR. ACETO: If we can agree that the
9 waiver, which it would be, is going to be a waiver only
10 of that particular discussion and not anything else?

11 MR. TUMILTY: I'll agree it's a waiver of
12 discussions or communications regarding that issue.

13 MR. ACETO: Just this specific issue as to
14 whether to list the National Union potential claims
15 against National Union to cover or indemnify any
16 resulting damages?

17 MR. TUMILTY: Yes, I'll agree to that.

18 BY MR. TUMILTY:

19 Q. With that agreement, can you tell me what you
20 and your bankruptcy attorney discussed regarding the
21 issue of whether to list any potential claim of coverage
22 with respect to the National Union policy?

23 A. I don't remember it being a lengthy
24 discussion. It's just he didn't see it as an asset. It

1 wasn't any, it wasn't any big deal discussion. But he
2 did say that he would talk to the trustee about it.

3 Q. Did you see it as an asset of your bankruptcy?

4 A. No, absolutely not.

5 Q. How did the issue even come up that you and
6 your attorney were discussing the issue of whether to
7 list an interest in the policy?

8 A. Well, because there was a question about
9 litigation. To be honest, I don't remember how that was
10 discussed.

11 Q. Did you and your bankruptcy attorney have any
12 written communications about the issue of whether to
13 list an interest in the National Union policy on your
14 bankruptcy schedules?

15 A. No.

16 Q. Did you personally ever have any discussions
17 with the bankruptcy trustee regarding the issue of where
18 to list on your schedules an interest in the National
19 Union policy?

20 A. No, but I was present when my attorney talked
21 with him.

22 Q. How many time did your attorney talk to the
23 bankruptcy trustee about that issue?

24 A. I don't know how many times. I was there once

1 when I observed it.

2 Q. Can you tell me what was discussed on the
3 issue of whether to list an interest in the National
4 Union policy on your schedules with the trustee?

5 A. I don't remember the details. All I know is
6 that it was discussed, and there wasn't any suggestion
7 that it be, that the schedules be amended.

8 Q. Do you have any memory of the trustee saying
9 that he did not think that any interest that you may or
10 may not have had in the National Union policy was an
11 interest that should be listed on your schedule?

12 MR. ACETO: Please read it back.

13 MR. TUMILTY: I'll rephrase it.

14 BY MR. TUMILTY:

15 Q. When you said that there was never any
16 indication that anyone felt the schedules needed to be
17 amended, what I'm trying to find out is do you have any
18 memory of the trustee actually saying I don't think
19 that's an interest that needs to get put on these
20 schedules?

21 A. I remember the outcome of the conversation.
22 That's all I remember is they discussed it. I don't
23 remember what his words were, but it was clearly
24 discussed and the conclusion was to do nothing.

1 coverage for all of the claims that Heller brought
2 against you?

3 A. I don't know. I don't have the memory to know
4 what the counts were at this point. I guess from my
5 point of view, I think in terms of when you spend
6 \$20,000 for a directors and officers premium for a year
7 and you basically don't get anything for it, it just
8 seems unfair.

9 Q. Earlier you mentioned that you recall there
10 was a negligence claim and breach of guaranty claim. Do
11 you believe that National Union should have provided
12 coverage for the negligence claim?

13 A. Absolutely.

14 Q. Do you believe that National Union should have
15 provided coverage for the breach of guaranty claim?

16 A. I think National Union should have at least
17 inquired -- for a company that paid \$20,000 to say no
18 and not even listen, all they would have to do is look
19 at the documentation that I have that shows there's no
20 guaranty.

21 And they should have stepped in to help us
22 defend ourselves. They never even tried to learn. They
23 just basically said no.

24 Q. You addressed the negligence claim. I'm

1 that document before?

2 A. I don't recall seeing it.

3 Q. Did you know that Attorney Aceto had sent this
4 e-mail?

5 A. I just, as I sit here, I don't recall it at
6 all.

7 Q. You have no memory of whether you asked Mr.
8 Aceto to write this e-mail?

9 A. No. I didn't specifically ask him to write
10 this e-mail. I mean, we were obviously talking about
11 the subject matter. I just don't remember this.

12 Q. You can take whatever time you need. Have you
13 had a chance to review the e-mail?

14 A. Yes.

15 Q. Do you agree with the contents of it?

16 A. It was 1998, and I wasn't involved with the
17 day to day and I never had any involvement ever in
18 compiling borrowing base certificates. So that's
19 accurate. Other than the date, I think that I basically
20 sometime in the May, June '98 period -- that's off by
21 six months.

22 Q. But you agree with the position expressed in
23 the last paragraph of the body of that e-mail that you
24 were an insured under the National Union policy and that

1 00003 through IIG 00015. The first page of that Exhibit
2 8 is a fax cover sheet from International Insurance
3 Group to Gregory Aceto dated November 26, 2002. There
4 are enclosures with that fax after that. If you go two
5 pages in, there's another fax cover sheet dated July 31,
6 2001 to Pam Jones from Nicholas Sciotto at International
7 Insurance Group. Have you seen Exhibit 8 before?

8 MR. ACETO: In its entirety? There are
9 separate documents that I'm not quite sure if they came
10 together.

11 BY MR. TUMILTY:

12 A. I've never seen the fax pages.

13 (Off the record discussion.)

14 BY MR. TUMILTY:

15 Q. To clarify, what has been marked as Exhibit 8
16 here today consists of Bates numbers 0077 consecutively
17 numbered to 0088. It's your testimony that you've never
18 seen the first page of Exhibit 8 or the second page of
19 Exhibit 8 before?

20 A. I just don't know. I can't tell you that I
21 remember it. I mean, I could have.

22 Q. If you go into the third page of Exhibit 8,
23 you'll see there's a letter dated July 27, 2001?

24 A. Um-hum.

1 Q. It's a two-page letter?

2 A. Right.

3 Q. Do you know if you've ever seen that letter
4 before?

5 A. I don't know.

6 Q. Do you know if you have ever seen any of the
7 pages before that are in Exhibit 8?

8 A. All I can tell you is that I remember
9 requesting that Pam Jones send me a copy of the
10 directors and officers policy. I can't say that I
11 remember any of these pages. I wanted to make damn sure
12 we had a policy.

13 Q. But you can't say sitting here today whether
14 you've seen any of these pages before?

15 A. No. But that's part of my memory problem.
16 I've gone over a lot of documents on this case and I
17 could have, I just don't remember.

18 Q. I understand that. I'm trying to get your --

19 MR. ACETO: The question was more about at
20 the time period, not whether he reviewed it in
21 preparation for litigation or something, is that right?

22 MR. TUMILTY: Right.

23 MR. ACETO: Did you understand that?

24 THE WITNESS: Yes.

1 MR. ACETO: It was when this was created
2 back in July of 2001 or sometime --

3 MR. TUMILTY: That's one question.

4 BY MR. TUMILTY:

5 Q. Simply sitting here today, do you have any
6 memory of seeing this document before, Exhibit 8?

7 A. I don't remember seeing, I don't today
8 remember seeing this. I do know that I had documents
9 about the D & O policy sent to me. I saw something. I
10 probably saw this. I just don't remember it today.

11 Q. If you look at the first page of Exhibit 8,
12 the fax cover sheet to Gregory Aceto from International
13 Insurance Group, the body of the message there says,
14 "Attached is a copy of the quote sent to Pam Jones on
15 July 31, 2001. Please take note that the endorsement
16 noted 'For-Profit Health Care Amendatory Endorsement'
17 was disclosed to our client. This endorsement contained
18 the verbiage regarding Contractual Liability Exclusion.
19 Let me know if you require additional information." Do
20 you see that?

21 A. I do.

22 Q. And to your understanding, is the reference
23 there to "our client" MHCS?

24 MR. ACETO: If you know.

1 BY MR. TUMILTY:

2 Q. In the same exhibit, Exhibit 13, paragraph 18,
3 please review that paragraph to yourself.

4 A. Okay.

5 Q. It states, "Upon information and belief,
6 International failed to fully advise MHCS regarding the
7 language of the alleged exclusion and the effective said
8 exclusion on MHCS's liability coverage under the
9 policy."

10 Do you know what the basis is for that
11 paragraph?

12 A. Yes. I mean, I had what I thought was a
13 long-term relationship with International. We had been
14 buying our insurance from them probably since 1990.
15 They obviously had, you know, an obligation to advise me
16 of things.

17 I never knew anything about such an exclusion.
18 I think International or National, someone, owed me an
19 explanation, and they should have brought it to my
20 attention.

21 Q. You don't know for a fact that International
22 did not bring it to the attention of either Pamela Jones
23 or Indy Edwards, do you?

24 A. No, I don't know.

1 been issued by National Union, would you read them?

2 A. Yeah, but I wouldn't read every word.

3 Q. Would you discuss them with anyone?

4 A. I don't think I did.

5 Q. You didn't discuss them with Pamela Jones or
6 Indy Edwards?

7 A. No.

8 Q. Did you discuss them with anyone at IIG?

9 A. No.

10 Q. Did you discuss them with an attorney at that
11 time?

12 A. Not at that time.

13 Q. I believe it's been your testimony that to
14 your knowledge none of the directors and officers
15 liability policies that National Union issued to or
16 provided to MHCS contained a contractual exclusion as we
17 saw it alleged in your Complaint?

18 A. I don't think that's what I said. I said I
19 never knew at the time or I wouldn't have paid the
20 \$25,000 or I wouldn't have allowed our company to spend
21 \$25,000.

22 Q. This is an important point, so I want to make
23 sure it's clear. Your testimony is you never knew that
24 a contractual liability exclusion may have been in the

1 transaction?

2 A. 1,399,000.

3 Q. Resulting in a total loss of \$536,688. How
4 was that amount calculated?

5 A. The difference between what I sold it for and
6 what it was appraised for maybe three to six months
7 before then. It was appraised for a million 750, and I
8 put it on the market for that price and had to drop and
9 drop. I needed the cash. I have all those appraisals.

10 Q. Do you recall how much you paid for the house
11 in Florida?

12 A. A million one.

13 Q. The last sentence of paragraph 36, was the
14 amount of the additional indebtedness that you added to
15 your home in Hingham, was that \$250,000?

16 A. Yes.

17 Q. Why was that additional indebtedness added to
18 your home in Hingham at that time?

19 A. Well, I needed not only the money for the
20 settlement, I had legal fees, I don't remember what the
21 balance to be paid was. I had tapped out a home equity
22 line that I had to pay off. I was basically robbing
23 Peter to pay Paul to get through this period.

24 Q. As you sit here today, can you tell me what

1 because I don't think I would have lost.

2 Q. And if you had to put an estimate on your net
3 worth right now, what would you say it is?

4 A. Somewhere in the neighborhood of \$500,000.

5 Q. When you said there were \$5.8 million worth of
6 loans that went poof, were those loans from you to MHCS?

7 A. Yes.

8 Q. Did you recover anything on those loans?

9 A. No.

10 Q. Then you said something along the lines of
11 positioning by Heller, do you recall that?

12 A. Um-hum.

13 Q. What were you referring to?

14 A. It's a long story. If you want, I'll tell you
15 the story. To try to make it as succinct as possible,
16 this whole subject of negligence on the borrowing
17 certificates is just the opposite. If anything, they
18 were showing the two ladies that ran the company ways to
19 create recognition of revenue streams.

20 The reason that Heller changed their stripes
21 is because Pam Jones was such an honest person that she
22 just wasn't comfortable doing what they said she could
23 do. Although we were in bankruptcy at the time, Heller
24 basically saw a company that was going to be able to

1 fund the loans, there wasn't going to be a problem with
2 that, but they seemed to become -- they became very,
3 very aggressive with the bankruptcy judge. They did
4 things that were so out of character just to upset the
5 judge.

6 And one of the other partners from Edward and
7 Angell, she knows they are bad guys. She despises them.
8 I don't know if she would admit that now. They caused
9 the bankruptcy judge to put the company in bankruptcy
10 and they kept all the receivables. There's never been
11 an accounting.

12 The overline, which was the only part I
13 guaranteed, which was about \$200,000, that was supported
14 by the private receivables. It was in excess of
15 200,000. Pam Jones and Indy Edwards both fully expected
16 that that was all collected. If there was anything left
17 on that guaranty of mine for that portion, we all would
18 have been surprised.

19 But they never gave us any accounting. And
20 Heller ended up where they collected all the
21 receivables, and they saw an opportunity with this D & O
22 policy to make it a bad pay day. And if I hadn't been
23 so beaten down with this bankruptcy, I never would have
24 signed that settlement agreement.

C E R T I F I C A T E


COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS.

I, Patricia M. Haynes, a Notary Public in and
for the Commonwealth of Massachusetts, do hereby
certify:

That MICHAEL INGOLDSBY, the witness whose
testimony is hereinbefore set forth, was duly sworn by
me and that such testimony is a true and accurate record
of my stenotype notes taken in the foregoing matter, to
the best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set my
hand and Notarial Seal this 20th day of October 2006.


Patricia M. Haynes, CSR
Notary Public

My commission expires July 30, 2010



NATIONAL UNION
FIRE INSURANCE COMPANY
OF PITTSBURGH, PA.®

A CAPITAL STOCK COMPANY

ADMINISTRATIVE OFFICES:
175 WATER STREET, NEW YORK, N.Y. 10038

POLICY NUMBER:
873-87-52

RENEWAL OF:
473-16-30

DIRECTORS AND OFFICERS INSURANCE AND COMPANY REIMBURSEMENT POLICY

NOTICE: EXCEPT TO SUCH EXTENT AS MAY OTHERWISE BE PROVIDED HEREIN, THE COVERAGE OF THIS POLICY IS LIMITED GENERALLY TO LIABILITY FOR ONLY THOSE CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED AND REPORTED TO THE INSURER DURING THE POLICY PERIOD. PLEASE READ THE POLICY CAREFULLY AND DISCUSS THE COVERAGE THEREUNDER WITH YOUR INSURANCE AGENT OR BROKER.

NOTICE: THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS SHALL BE REDUCED BY AMOUNTS INCURRED FOR LEGAL DEFENSE. AMOUNTS INCURRED FOR LEGAL DEFENSE SHALL BE APPLIED AGAINST THE RETENTION AMOUNT.

NOTICE: THE INSURER DOES NOT ASSUME ANY DUTY TO DEFEND; HOWEVER, THE INSURER MAY, AND IN CERTAIN CIRCUMSTANCES MUST, ADVANCE DEFENSE COSTS PAYMENTS PRIOR TO THE FINAL DISPOSITION OF A CLAIM.

DECLARATIONS

ITEM 1. NAMED CORPORATION: *MANAGED HEALTH CARE SYSTEMS*

MAILING ADDRESS: *175 DERBY ST STE 24*
HINGHAM, MA 02043-3406

STATE OF INCORPORATION OF THE NAMED CORPORATION:
Massachusetts

ITEM 2. SUBSIDIARY COVERAGE: any past, present or future Subsidiary of the Named Corporation

ITEM 3. POLICY PERIOD: From *August 4, 2001* to *August 4, 2002*
(12:01 A.M. Standard Time at the address stated in Item 1)

ITEM 4. LIMIT OF LIABILITY: *\$3,000,000* aggregate for Coverages A and B
combined (including Defense Costs)

ITEM 5. RETENTION:

Company Reimbursement and indemnifiable Loss: *\$25,000* for Loss arising from
claims alleging the
same Wrongful Act or
related Wrongful Acts.

ITEM 6. PREMIUM: *\$24,995*

CARPENTER & MOORE INSURANCE SERVICES INC.
530 WASHINGTON STREET
SAN FRANCISCO, CA 94111

[Signature]
Authorized Representative

Sep 27, 2001

AIG/GE HFS 00162

7113299

Countersignature
Date

Countersigned
At

DIRECTORS AND OFFICERS INSURANCE AND COMPANY REIMBURSEMENT POLICY

In consideration of the payment of the premium, and in reliance upon the statements made to the Insurer by application forming a part hereof and its attachments and the material incorporated therein, National Union Fire Insurance Company of Pittsburgh, Pa.⁹ herein called the "Insurer", agrees as follows:

1. INSURING AGREEMENTS

COVERAGE A: DIRECTORS AND OFFICERS INSURANCE

This policy shall pay the Loss of each and every Director or Officer of the Company arising from any claim or claims first made against the Directors or Officers and reported to the Insurer during the Policy Period or the Discovery Period (if applicable) for any alleged Wrongful Act in their respective capacities as Directors or Officers of the Company, except for and to the extent that the Company has indemnified the Directors or Officers. The Insurer shall, in accordance with and subject to Clause 9, advance to each and every Director and Officer the Defense Costs of such claim or claims prior to their final disposition.

COVERAGE B: COMPANY REIMBURSEMENT INSURANCE

This policy shall reimburse the Company for Loss arising from any claim or claims which are first made against the Directors or Officers and reported to the Insurer during the Policy Period or the Discovery Period (if applicable) for any alleged Wrongful Act in their respective capacities as Directors or Officers of the Company, but only when and to the extent that the Company has indemnified the Directors or Officers for such Loss pursuant to law, common or statutory, or contract, or the Charter or By-laws of the Company duly effective under such law which determines and defines such rights of indemnity.

2. DEFINITIONS

- (a) The "Company" means the Named Corporation designated in Item 1 of the Declarations and any Subsidiary thereof.
- (b) "Defense Costs" means reasonable and necessary fees, costs and expenses consented to by the Insurer (including premiums for any appeal bond, attachment bond or similar bond, but without any obligation to apply for or furnish any such bond) resulting solely from the investigation, adjustment, defense and appeal of any claim against the Insureds, but excluding salaries of Officers or employees of the Company.
- (c) "Insured(s)", or "Director(s) or Officer(s)", means any past, present or future duly elected or appointed Directors or Officers of the Company. Coverage will automatically apply to all new Directors or Officers after the inception date of this policy.
- (d) "Loss" means damages, judgments, settlements and Defense Costs; however, Loss shall not include civil or criminal fines or penalties imposed by law, punitive or exemplary damages, the multiplied portion of multiplied damages, taxes, any amount for which the Insureds are not financially liable or which are without legal recourse to the Insureds, or matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.
- (e) "Policy Period" means the period of time from the inception date shown in Item 3 of the Declarations to the earlier of the expiration date shown in Item 3 of the Declarations or the effective date of cancellation of this policy; however, to the extent that coverage under this policy replaces coverage in other policies terminating at noon standard time on the inception date of such coverage hereunder, then such coverage as is provided by this policy shall not become effective until such other coverage has terminated.

- (f) "Subsidiary" means a corporation of which the Named Corporation owns on or before the inception of the Policy Period more than 50% of the issued and outstanding voting stock either directly or indirectly through one or more of its Subsidiaries.

"Subsidiary" also means any corporation which becomes a Subsidiary during the Policy Period but only upon the condition that within 90 days of its becoming a Subsidiary, the Named Corporation shall have provided the Insurer with full particulars of the new Subsidiary and agreed to any additional premium and/or amendment of the provisions of this policy required by the Insurer relating to such new Subsidiary. Further, coverage as shall be afforded to the new Subsidiary is conditioned upon the Named Corporation paying when due any additional premium required by the Insurer relating to such new Subsidiary. A corporation becomes a Subsidiary when the Named Corporation owns more than 50% of the issued and outstanding voting stock either directly or indirectly through one or more of its Subsidiaries.

- (g) "Wrongful Act" means any breach of duty, neglect, error, misstatement, misleading statement, omission or act by the Directors or Officers of the Company in their respective capacities as such, or any matter claimed against them solely by reason of their status as Directors or Officers of the Company.

3. EXTENSIONS

Subject otherwise to the terms hereof, this policy shall cover Loss arising from any claims made against the estates, heirs, or legal representatives of deceased Directors or Officers, and the legal representatives of Directors or Officers in the event of their incompetency, insolvency or bankruptcy, who were Directors or Officers at the time the Wrongful Acts upon which such claims are based were committed.

4. EXCLUSIONS

The Insurer shall not be liable to make any payment for Loss in connection with any claim or claims made against the Directors or Officers:

- (a) arising out of, based upon or attributable to the gaining in fact of any personal profit or advantage to which they were not legally entitled;
- (b) arising out of, based upon or attributable to the committing in fact of any criminal or deliberate fraudulent act;
- (c) arising out of, based upon or attributable to the payment to the Insureds of any remuneration without the previous approval of the stockholders of the Company, which payment without such previous approval shall be held to have been illegal;
- (d) arising out of, based upon or attributable to profits in fact made from the purchase or sale by the Insureds of securities of the Company within the meaning of Section 16(b) of the Securities Exchange Act of 1934 and amendments thereto or similar provisions of any state statutory law;

(The Wrongful Act of any Director or Officer shall not be imputed to any other Director or Officer for the purpose of determining the applicability of the foregoing exclusions 4(a) through 4(d))

- (e) alleging, arising out of, based upon or attributable to any attempt, whether successful or unsuccessful, by any person or entity to acquire securities of the Company against the opposition of the Board of Directors of the Company ("Board"), or any action, whether successful or unsuccessful, by the Company or the Board to resist such attempts; however, this exclusion shall not apply if, before taking any such resistive action, the Company or the Board has obtained a written opinion (1) from independent legal counsel that such resistive action is a lawful exercise of the Board's business judgment and (2)

ENDORSEMENT# 8 (Continued)

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C. The Definition of Wrongful Act is amended to include the following at the end thereof:

With respect to all Insureds, any alleged defect in peer review or credentialling.

II. AMENDMENTS TO EXCLUSIONS

1. Exclusions 4 (h) is deleted in its entirety and replaced with the following:

(h) alleging, arising out of, based upon or attributable to any actual or alleged contractual liability of the Company or an Insured under any express (written or oral) contract or agreement (including, but not limited to, any liquidated damages, severance agreement or payment, golden parachute agreement, or any compensation agreement payable upon the termination of any Insured); provided, however, that this exclusion shall not apply to:

(1) Employment Practices Claims to the extent that any liability does not arise from such express contract or agreement; or

(2) Claims for Loss alleging Wrongful Acts of an Insured(s) with respect to hospital practice, privileges, credentialling or peer review matters.

2. The following additional exclusions are added to the end of Clause 4. EXCLUSIONS:

(r) alleging, arising out of, based upon or attributable to any failure or omission on the part of the Insureds or the Company to effect and maintain insurance;

(s) alleging, arising out of, based upon or attributable to, or in any way involving, either directly or indirectly, antitrust violations, price fixing, price discriminations, unfair competition, deceptive trade practices and/or monopolies, including any actions, proceedings, claims or investigations related thereto;

(t) alleging, arising out of, based upon or attributable to the Insureds performance or rendering of or failure to perform or render medical or other professional services or treatments for others; provided, however, that this exclusion shall not apply to:

(1) Employment Practices Claims;

(2) Claims for Loss alleging Wrongful Acts of an Insured(s) peer review or credentialling processes;

END

ENDORSEMENT# 8 (Continued)

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(u) alleging, arising out of, based upon or attributable to any Human Clinical Trial. For purposes of this exclusion (u), "Human Clinical Trial" shall mean any study utilizing humans to provide clinical data for the assessment of a medical treatment, procedure or pharmaceutical.

III. AMENDED CLAUSE 9

Clause 9 is deleted in its entirety and replaced with the following:

9. PRE-AUTHORIZED DEFENSE ATTORNEYS FOR ALL CLAIMS

This Clause 9 applies to all Claims.

Affixed as Appendix A hereto and made a part of this policy is a list or lists of Panel Counsel law firms ("Panel Counsel Firms") from which a selection of legal counsel shall be made to conduct the defense of all Claims against an Insured pursuant to the terms set forth below.

In the event the Insurer has assumed the defense pursuant to Clause 8 of this policy, then the Insurer shall select a Panel Counsel Firm to defend the Insureds. In the event the Insureds are already defending a Claim, then the Insureds shall select a Panel Counsel Firm to defend the Insureds.

The selection of the Panel Counsel Firm, whether done by the Insurer or the Insureds, shall be from the list of Panel Counsel Firms designated for the type of Claim and be from the jurisdiction in which the Claim is brought. In the event a Claim is brought in a jurisdiction not included on the appropriate list, the selection shall be made from a listed jurisdiction which is the nearest geographic jurisdiction to either where the Claim is maintained or where the corporate headquarters or state of formation of the Named Entity is located. In such instance, however, the Insurer shall, at the written request of the Named Entity, assign a non-Panel Counsel Firm of the Insurer's choice in the jurisdiction in which the Claim is brought to function as "local counsel" on the Claim to assist the Panel Counsel Firm which will function as "lead counsel" in conducting the defense of the Claim.

With the express prior written consent of the Insurer, an Insured may select (in the case of the Insured defending the Claim), or cause the Insurer to select (in the case of the Insurer defending the Claim), a Panel Counsel Firm different from that selected by

END

ENDORSEMENT# 8 (Continued)

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other insured defendants if such selection is required due to an actual conflict of interest or is otherwise reasonably justifiable.

The list of Panel Counsel Firms may be amended from time to time by the Insurer. However, no change shall be made to the specific list attached to this policy during the Policy Period without the consent of the Named Entity.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

END

(2/90)

INSU

AUTHORIZED REPRESENTATIVE

AIG/GE HFS 00238